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Agenda No. 20
10/23/12

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

**Re: Report on Legal Issues Relating to Recommendations Made by
the Citizens' Commission on Jail Violence**

Dear Supervisors:

On October 2, 2012, your Board instructed County Counsel to analyze the legal ramifications of the recommendations made by the Citizens' Commission on Jail Violence ("CCJV") regarding the Los Angeles County Jails. This report addresses the overarching legal principles applicable to the recommendations.

I. Authority of the Board of Supervisors and the Sheriff

The threshold issue affecting the implementation of the CCJV's recommendations is the scope of your Board's authority and the scope of the Sheriff's authority over law enforcement operations.

A. Sheriff's Authority

The California Constitution provides that the Legislature shall provide for an elected sheriff in each county. State law confers upon the sheriff the primary responsibility for investigating public offenses and for arresting and taking before a magistrate all persons who have committed an offense. The sheriff is also responsible for the policies, procedures and administration of the county jail.

A sheriff is functionally independent from the control of county boards of supervisors in performing these law enforcement functions. The courts have indicated that a board of supervisors cannot use its budgetary power to control the operation of the sheriff's office or county jail operations.

B. Board of Supervisors' Authority

1. Budgetary/Fiscal Power

A sheriff does not have unfettered discretion, however, when it comes to the jail or other law enforcement functions. For example, the Board controls the Sheriff's budget. The adoption of a budget is a legislative function exclusively assigned to a board of supervisors.

The respective powers of a board of supervisors to determine a sheriff's budget and a sheriff's mandate to perform his assigned law enforcement functions have created conflicts between sheriffs and boards of supervisors across California. The Attorney General has opined that while a county board of supervisors has the power to set the budgets for the sheriff and district attorney, a board lacks the authority, directly or indirectly, to control the manner in which a sheriff (or district attorney) expends appropriated funds or the manner in which personnel are assigned, as such control would unlawfully impair the exercise of their constitutional and statutory powers.

The distinction between a board of supervisors' legislative role in appropriating resources for an elected official, and that elected official's authority in allocating those resources has been addressed by the courts. In one case, the Orange County Board of Supervisors eliminated the district attorney's investigative staff and transferred "overlapping" investigative services from the district attorney's office to the sheriff. The Court of Appeal held that the board's action was an unlawful interference with the district attorney's duties. The Court of Appeal found that the board's action was not budgetary in nature, and because it interfered with the performance of the district attorney's investigative and prosecutorial duties, it was beyond the board's lawful authority.

In contrast, in another case, a court held that the Butte County Board of Supervisors acted within its constitutional authority in ordering layoffs of sheriff's deputies. The court held that the adoption of the budget was a legislative act vested by law in the county board of supervisors and was not an exercise of the sheriff's law enforcement function, and that the Butte County Board of Supervisors did not reduce the sheriff's positions in a way that would obstruct the manner in which the sheriff was to perform his duties. A board of supervisors is not required to fund at a level the sheriff deems appropriate. The courts have held that a board can reduce the number of employees in a sheriff's department in response to legitimate fiscal concerns.

2. Oversight

While a board of supervisors cannot direct the manner in which the sheriff performs his assigned law enforcement functions, each board has a clear statutory duty to supervise the conduct of all county officers, including the sheriff. The California courts have held that the operations of the sheriff and the conduct of his or her employees are a legitimate concern of each board of supervisors, and that as part of a board's duty to supervise the conduct of the sheriff it may establish an advisory citizens commission to study, report and make recommendations to the sheriff and the board on the sheriff's operations.

Government Code section 25303 provides that boards of supervisors shall supervise the official conduct of all county officers:

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

This section shall not be construed to affect the independent and constitutionally and statutorily designed investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

As set forth above, a board's oversight authority does not extend to actions that would obstruct the investigative functions of the sheriff. Notwithstanding that limitation, section 25303 reflects your Board's authority to determine whether an elected officer, such as the Sheriff, has faithfully performed his or her duties, even though your Board cannot control, either directly or indirectly, the manner in which those duties are performed.

As part of your Board's oversight function, your Board can take steps to ensure that the Sheriff is faithfully performing his duties, including the creation of commissions to report on matters within your Board's interest.

C. CCJV's Recommendations

Applying these principles to the CCJV's recommendations, your Board could create an independent oversight entity to look into the Sheriff's management of the jails. As envisioned by the Jail Commission, such an entity would oversee and monitor conditions in County jails, review use of force investigations and the disciplinary process, conduct its own investigations, and review and conduct its own audits and inspections, all with the goal of ensuring that the Board and the public are kept informed of jails conditions, that problems are promptly and publicly identified, and that needed reforms are implemented in a timely and most importantly transparent manner. For the reasons set forth above, this entity would need the cooperation of the Sheriff and would be most effective only if it had the full cooperation of the Sheriff. Your Board could also adjust the number of budgeted custody positions in response to budgetary considerations.

To the extent that the remainder of the CCJV's recommendations encompass operational changes within the Sheriff's Department, it is the Sheriff who would have the ultimate authority to decide whether and exactly how to implement the recommendations. Significantly, the Sheriff has already publicly indicated that he intends to implement all the recommendations that are within his authority, and that he welcomes the public accountability that an independent oversight entity would provide.

II. Office of Inspector General or Oversight Commission

With regard to the creation of an OIG and/or an independent oversight commission to oversee and monitor the Sheriff's Department and the jails, it is within the Board's authority to create such an entity. The Sheriff would continue to have responsibility for law enforcement operations, with the OIG or the commission advising the Sheriff and providing public accountability. As the CCJV points out, through its independent and public reports, the OIG would

ensure that problems come to light and needed reforms are publicly presented and discussed in a timely manner.

A. Confidentiality, Privileges, and the Brown Act

Whether your Board creates an OIG or an oversight commission, the confidentiality of Sheriff's Department investigative reports, conclusions, and personnel records will have to be taken into account. Generally, peace officer personnel records, including certain investigative reports, are considered confidential and the Penal Code limits access to such records. Inmates maintain certain privacy interests regarding their incarceration. An inmate's medical and psychiatric records are generally considered to be confidential.

After your Board determines whether it will create an OIG or a citizens oversight commission, we can better assess and address issues relating to the confidentiality of Sheriff Department records.

A citizens oversight commission would be subject to the notice and operational mandates of the Brown Act as the Brown Act applies to all local legislative bodies, including commissions created by formal action of a legislative body.

III. Labor Issues Related to the CCJV's Recommendations

Many of the CCJV's recommendations touch upon issues that have been negotiated between the Association for Los Angeles Deputy Sheriffs ("ALADS") and the County. Implementation of some of those recommendations may require negotiation with ALADS.

Very truly yours,


JOHN F. KRATTLI
County Counsel

JFK:jb

c: Leroy D. Baca, Sheriff

William T Fujioka, Chief Executive Officer

Sachi A. Hamai, Executive Officer, Board of Supervisors